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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 797

LENA S. TILLMAN, ADMINISTRATRIX OF THE ESTATE OF JAMES A. TILLMAN, DECEASED, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. 40–47; R. 83–88)[1] is reported at 320 F. 2d 396.

JURISDICTION

The judgment of the Court of Claims (Pet. App. 40–47; R. 83–88) was entered on July 12, 1963, and was

[1] "R." references are to the transcript of record. "J.A." refers to the Joint Appendix filed in the Court of Appeals for the District of Columbia Circuit in *Lena S. Tillman, etc. v. Robert B. Anderson, etc., et al.*, No. 15,254, decided without opinion October 30, 1959, certiorari denied, 362 U.S. 903, rehearing denied, 362 U.S. 957. This document was Exhibit No. 1 to the Government's motion to dismiss in the court below in this case.

amended on July 22, 1963 (R. 89). A motion for rehearing was denied on October 11, 1963 (R. 113). On January 6, 1964, the time to file a petition for a writ of certiorari was extended by order of the Chief Justice to February 8, 1964. The petition for a writ of certiorari was filed on January 29, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

QUESTION PRESENTED

Whether the court below correctly ruled that it had no jurisdiction to entertain this action since in effect it sought review of a decision of the Foreign Claims Settlement Commission denying petitioner's claim under the International Claims Settlement Act of 1949.

STATUTES INVOLVED

The International Claims Settlement Act of 1949, 64 Stat. 12, as amended by the Act of August 9, 1955, 69 Stat. 562, provides in pertinent part:

> Sec. 301 [22 U.S.C. 1641(8)]. As used in this title the term—
>
> * * * * * * *
>
> (8) "Commission" means the Foreign Claims Settlement Commission of the United States, established pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).
>
> * * * * * * *
>
> Sec. 302 [22 U.S.C. 1641a]. There [is] hereby created in the Treasury of the United States [a fund] to be known as the * * * Soviet Claims Fund. * * * The Secretary [of the Treasury] shall cover into the Treasury the funds collected by the United States pursuant

to the Litvinov Assignment (including postal funds due prior to November 16, 1933, to the Union of Soviet Socialist Republics because of money orders certified to that country for payment) and shall cover into the Soviet Claims Fund the funds so covered into the Treasury. * * *

* * * * *

Sec. 305 [22 U.S.C. 1641d] (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of—

(1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. * * * [2]

* * * * *

(b) Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue

[2] For the text of the Litvinov Assignment, see Pet. App. 52–53; *United States* v. *Pink*, 315 U.S. 203, 212–213.

which was determined by the court in which the judgment was entered.

* * * * * *

Sec. 314 [22 U.S.C. 1641m]. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise * * *.

Pursuant to Section 318 (22 U.S.C. 1641q) of the 1955 amendment, the following provisions of International Claims Settlement Act of 1949, 64 Stat. 12, are applicable to claims under Section 305(a)(1):

Sec. 4 [22 U.S.C. 1623]

* * * * * *

(b) * * * Each decision by the Commission pursuant to this Act shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered.

* * * * * *

(h) * * * The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

* * * * * *

Sec. 7 [22 U.S.C. 1626]

(e) Any person who makes application for any * * * payment [made pursuant to this

Act] shall be held to have consented to all the provisions of this Act.

(f) Nothing in this Act shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government.

STATEMENT

Section 305 of the International Claims Settlement Act empowers the Foreign Claims Settlement Commission to make awards to certain holders of liens against the property of Russian nationals from a fund representing proceeds of the collection by the United States of claims assigned to it by the Soviet Government under the Litvinov Assignment of 1933. In March 1956, petitioner, as administratrix of the estate of her husband, James A. Tillman, filed with the Commission a claim against this fund under Section 305 (a)(1) (R. 85–86). After the claim was denied, petitioner unsuccessfully tried to obtain judicial review in an action for declaratory relief brought in the District of Columbia. Thereafter, she brought this suit in the Court of Claims asserting that the United States had "taken" the value of her lien against property in the possession of the Commission.

1. BACKGROUND OF THE LITIGATION

Petitioner's administrative claim was based upon a 1935 default judgment in the amount of $210,675.05 which her husband had obtained against the Russo-Asiatic Bank in a New York court, and a warrant of attachment issued in 1927 upon the Bank's assets

(R. 84; J.A. 16–18, 24–25). The warrant of attachment and the default judgment were obtained in the following manner. On August 22, 1927, Tillman, a United States citizen, instituted a suit in the Supreme Court of the State of New York against the Russo-Asiatic Bank, a Russian Corporation, on three asserted causes of action (R. 1–2, 13; J.A. 3, 34–35).[3] Tillman purported to obtain service on the Bank by levying an attachment on funds deposited with two New York banks (R. 83–84). The first two causes of action were removed to the United States District Court for the Eastern District of New York, and on June 26, 1928, that court, with the consent of Tillman's attorney, entered an order vacating the attachment and levy (R. 84). The matter then proceeded to trial in the federal court and resulted in a judgment against Tillman on both causes. On appeal, the judgment against Tillman on the first cause of action was affirmed. As to the second cause of action, the Second Circuit held that the district court had lacked jurisdiction over the subject matter and ordered it remanded to the state court (J.A. 35–36); *Tillman* v. *Russo-Asiatic Bank,* 51 F. 2d 1023 (C.A. 2). This Court denied certiorari, 285 U.S. 539.

Upon remand, the Bank procured an order from the state court vacating the August 22, 1927, attachment and all levies thereunder as of June 26, 1928 (J.A. 4). This order was upheld by the Appellate Division of the

[3] The first cause of action sought payment in U.S. dollars for the Bank's alleged dishonor of Tillman's check for 72,000 rubles. The second cause of action sought payment in U.S. dollars for an unpaid draft for 100,000 rubles assigned to Tillman. The third cause of action sought payment for an unpaid money order assigned to Tillman.

New York Supreme Court and then by the New York Court of Appeals. The latter court held that the order merely created a notation on the record of the valid action previously taken by the federal court (R. 84). See *Tillman* v. *Russo-Asiatic Bank,* 240 App. Div. 710, 264 N.Y.S. 714 (2d Dept.), affirmed, 264 N.Y. 467, 191 N.E. 495.

On January 19, 1933, the state court entered a judgment dismissing Tillman's first and third causes of action, but deferred decision, pending proof of the foreign law, on whether the second cause of action was barred by the Russian statute of limitations. On July 13, 1935, after the New York Court of Appeals rendered its decision in *Issaia* v. *Russo-Asiatic Bank, et al.,* 266 N.Y. 37, 193 N.E. 543, the state court entered an order setting aside these judgments and orders, and also, *nunc pro tunc* as of November 26, 1927, the former order of the state court vacating the August 22, 1927, attachment as of June 26, 1928 (R. 84; J.A. 4). On September 23, 1935, the state court entered the default judgment for $210,675.05 (J.A. 36) which was the basis of petitioner's claim before the Foreign Claims Settlement Commission (R. 84).

Following the filing of the claim, the Commission requested petitioner to produce evidence of its origin, the name of the person in whose favor the claim originally arose, all subsequent owners and their nationality, and how and when the claim against the Bank arose.[4] Petitioner did not comply with the

[4] Under 22 U.S.C. 1641d(a)(1) the Commission only determines the validity and amounts of "claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States * * *."

Commission's request (R. 86).[5] Nevertheless the Commission conducted an independent investigation (J.A. 34–36), as contemplated by the statute (22 U.S.C. 1623(b), 1641(q)). The investigation indicated that at least part of petitioner's claim did not originate with, but had been assigned to, petitioner's decedent (J.A. 36–37). No determination was made by the Commission as to whether petitioner had satisfied the additional requirement of Section 305(a)(1) that a "judgment or warrant of attachment * * * lien was obtained by a national of the United States prior to November 16, 1933" (J.A. 37, 41, 42).[6]

On August 1, 1956, the Commission issued a proposed decision (J.A. 32–37) denying petitioner's claim on the ground that she had failed to prove that her claim came within Section 305(a)(1) which requires that the claim "originally accru[e] in favor of a na-

[5] Petitioner's failure to furnish such evidence may be explained by the following facts revealed in *Steingut* v. *Guaranty Trust Co. of New York*, 58 F. Supp. 623, 642 (S.D. N.Y.), affirmed, 161 F. 2d 571 (C.A. 2), certiorari denied, 332 U.S. 807: "On September 23, 1935, he [Tillman] obtained a default judgment in the Supreme Court, Queens County, for $210,675.05. His claim arose out of the alleged dishonor of a check drawn by him for 72,000 Rubles on Russo-Asiatic Bank, Petrograd, on September 18, 1918, and included additional claims *assigned to him by Russian nationals* in 1927" (emphasis added). Moreover, as already indicated, prior to the default judgment of 1935, federal and state courts, ruling on the merits, had denied recovery to Tillman for his own claim arising out of the dishonor of the 72,000 Ruble draft.

[6] Tillman concededly did not obtain a judgment until 1935, and in *Steingut* v. *Guaranty Trust Co. of New York*, *supra*, 58 F. Supp. at 643, the court specifically held that Tillman did not have an attachment in effect against Russo-Asiatic property as of November 16, 1933, the date of the Litvinov Assignment.

tional of the United States * * *." Petitioner filed objections to this proposed decision (R. 86). On September 13, 1956, the Commission held a hearing at which time petitioner's objections and arguments were fully considered (J.A. 43). However, the Commission remained unsatisfied that the record was sufficient as to the origin of petitioner's claim (J.A. 43), and on October 9, 1956, the Commission issued an order which stated that unless petitioner, within ten days, sustained her burden of proving that her claim originally arose in favor of an American national, the Commission would affirm its proposed decision (J.A. 38–41). On November 14, 1956, the Commission issued its final decision denying petitioner's claim (R. 86; J.A. 41–44).

Petitioner then instituted declaratory judgment proceedings in the District Court for the District of Columbia against the Secretary of the Treasury and the members of the Foreign Claims Settlement Commission seeking judicial review of the Commission's determination (J.A. 2, 14, 15). Petitioner attacked the Commission's action as not in accord with the International Claims Settlement Act, and urged in the alternative that the Act was unconstitutional as in conflict with articles II, III, or V of the Constitution of the United States, or of Amendment 5 thereto * * * " (J.A. 14–15). The defendants moved to dismiss the complaint or in the alternative for summary judgment (J.A. 31). Petitioner also moved for summary judgment (J.A. 45). The district court found that Section 305 of the International Claims Settlement Act, as amended, was constitutional. The

court then denied petitioner's motion for summary judgment and granted the Government's motion to dismiss "on the ground that the Court lacks jurisdiction over the subject matter of the cause" (J.A. 49). The court of appeals affirmed *per curiam* (R. 42). This Court denied certiorari on February 29, 1960, and rehearing on April 18, 1960. *Tillman, Administratrix* v. *Anderson, Secretary of the Treasury, et al.*, 362 U.S. 903, 957.

2. THE PROCEEDINGS BELOW

Petitioner instituted this action on August 1, 1961, alleging essentially the same facts that were alleged in her declaratory judgment suit, and attacking the constitutionality of Section 302 of the International Claims Settlement Act, (R. 1–9) creating the Soviet Claims Fund. Petitioner sought a judgment in the amount of $200,675.05, the same amount she sought from the Soviet Claims Fund before the Commission (J.A. 32). After answering the petition (R. 11–20), the government moved to dismiss the petition or in the alternative for summary judgment, basing its motion on ten defenses, the first of which was that the court lacked jurisdiction over the subject matter (R. 11–13; 21–47). The court below granted this motion and dismissed the action (Pet. App. 40–47; R. 83–88). Petitioner's motion for rehearing was denied.

ARGUMENT

Congress, in establishing the Foreign Claims Settlement Commission, provided that, "The action of the Commission in allowing or denying any claim under

this title shall be final and conclusive on all questions of law and fact and not subject to review by * * * any court by mandamus or otherwise * * *."[7] Despite this clear Congressional mandate, which the courts have uniformly observed,[8] in 1958 petitioner sought to obtain judicial review of the Commission's decision on her claim by her action in the District Court for the District of Columbia (J.A. 2–15). That

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[7] Sec. 314, 22 U.S.C. 1641m, *supra*, p. 4; see also Sec. 4(h), 22 U.S.C. 1623(h), *supra*, p. 4.

The fixed Congressional purpose to accord absolute, unqualified finality to the decisions of the Commission is further confirmed by the legislative history of 22 U.S.C. 1641m. The committee reports in both Houses specifically noted the finality provisions (S. Rept. 800, 81st Cong., 1st Sess., pp. 5–6; H. Rept. 770, 81st Cong. 1st Sess., pp. 6–8); the minority report in the House took specific exception to the finality provisions (H. Rept. 770, Part 2, 81st Cong., 1st Sess., p. 2); a major heading in the presentation of the legislation by its sponsors on the floor of the House was called "Finality of Awards" (95 Cong. Rec. 8840); and the House, after considerable debate, rejected an amendment by Congressman Keating, which would have provided judicial review (95 Cong. Rec. 8853–8855). See also 95 Cong. Rec. 8845, 8847.

[8] As the opinion below demonstrates, there can be no question, on the facts of this case, of the constitutional power of Congress to deny judicial review of the Commission's action. Compare, *Ludecke* v. *Watkins*, 335 U.S. 160; *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297; *Z. & F. Assets Corp.* v. *Hull*, 311 U.S. 470; *United States* v. *Babcock*, 250 U.S. 328.

[8] See *First National City Bank of New York* v. *Gilliland*, 257 F. 2d 223, certiorari denied, 358 U.S. 837; *American and European Agencies* v. *Gilliland*, 247 F. 2d 95, certiorari denied, 355 U.S. 884; *Haas* v. *Humphrey*, 246 F. 2d 682, certiorari denied *sub nom. Haas* v. *Anderson*, 355 U.S. 854; *Dayton* v. *Gilliland*, 242 F. 2d 227, certiorari denied, 355 U.S. 813; *De Vegvar* v. *Gilliland*, 228 F. 2d 640, certiorari denied, 350 U.S. 994.

court correctly held that it lacked jurisdiction over the subject matter (J.A. 49). The decision was affirmed on appeal (R. 8), and this Court denied certiorari, 362 U.S. 903, and rehearing, 362 U.S. 957.

By the present suit, petitioner has again sought to obtain judicial review of the Commission's decision. But the mandate of section 314 is clear in precluding judicial review "by any court * * *." Thus, the court below correctly held that it lacked jurisdiction to review the Commission's action with respect to petitioner's claim (Pet. App. 45) and further review by this Court is not warranted.

Petitioner's contention that her property was unconstitutionally taken without compensation is fully answered by the court below (Pet. 45–47).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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